

LEGAL PROTECTION AGAINST DEFAULT OF APARTMENT SALE AND PURCHASE AGREEMENT: (CASE STUDY OF PT PROSPEK)

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Abstract. Bankruptcy and Suspension of Debt Payment Obligation (PKPU) proceedings involving property developers frequently generate significant legal uncertainty for apartment buyers who have fulfilled payment obligations but have not received the promised units. In practice, homologation decisions approving settlement plans often require consumers to continue payments despite prior breaches of contract, including construction delays or project abandonment. This situation creates tension between the binding nature of homologation under bankruptcy law and consumers' contractual rights under civil and consumer protection law. An examination of the Indonesian Civil Code, Consumer Protection Law, and Bankruptcy and PKPU Law demonstrates that a developer's breach of contract entitles buyers to claim specific performance, contract termination, or compensation. The principle of *exceptio non adimpleti contractus* legitimizes a buyer's refusal to perform further obligations when the counterparty has failed to fulfill its own. Empirical findings reveal structural bargaining power imbalance and limited legal certainty for consumers positioned as concurrent creditors within insolvency proceedings. A developer's liability does not extinguish upon bankruptcy but remains inherent in the obligation to restore losses in accordance with good faith and contractual justice. Harmonization between bankruptcy and consumer protection regimes is therefore essential to ensure substantive justice for property buyers.

Keywords: Legal Protection, Breach of Contract, Homologation, Insolvency

I. INTRODUCTION

The rapid growth of urban population, housing demand, and vertical residential development has intensified the legal complexity of apartment sale and purchase transactions in Indonesia. Apartments are no longer merely commercial property products; they represent a fundamental aspect of decent housing, consumer welfare, and legal certainty in urban life. In practice, many apartment units are marketed through pre-project selling schemes or preliminary sale and purchase agreements before the construction is fully completed. This mechanism provides developers with access to early funding, yet it also creates significant legal risk for buyers when the developer fails to complete construction, delays handover, or enters financial distress. Previous studies have shown that apartment buyers are often placed in a vulnerable position when developers default because consumers have already fulfilled payment obligations while the promised apartment units remain unfinished or legally uncertain [1], [2].

In Indonesian civil law, a sale and purchase agreement creates reciprocal obligations between the buyer and the developer. The developer is obliged to construct and deliver the apartment unit according to agreed specifications, while the buyer is required to make payment according to the contractual scheme. When the developer fails to perform its obligations,

such conduct may be classified as breach of contract or wanprestasi. The legal consequences of wanprestasi include the right of the injured party to demand performance, contract termination, compensation, or other remedies under the Indonesian Civil Code [3]. However, the problem becomes more complicated when the defaulting developer enters bankruptcy or Suspension of Debt Payment Obligation proceedings (Penundaan Kewajiban Pembayaran Utang / PKPU). In such circumstances, buyers are commonly treated as concurrent creditors, whose position is structurally weaker than secured and preferred creditors [4], [5].

The case of PT Prospek illustrates this legal tension. Buyers who had paid substantial amounts for apartment units faced uncertainty after construction was delayed and the developer entered PKPU proceedings. The homologation decision approving the settlement plan raised a further issue because some consumers were required to continue payment despite the developer's prior failure to fulfill its contractual obligations. This situation generates a fundamental conflict between the binding force of homologation under bankruptcy law and the consumer's contractual and statutory rights under civil law and consumer protection law. The principle of *exceptio non adimpleti contractus* becomes particularly relevant because it allows a party in a reciprocal contract to

refuse further performance when the counterparty has not first fulfilled its own obligations [6]. Therefore, the legal protection of apartment buyers must be examined not only from the formal validity of homologation, but also from the perspective of substantive justice, good faith, and proportional risk allocation.

Problem of the Study

The central problem of this study concerns the legal position of apartment buyers who refuse to continue payment after a homologation decision when the developer had previously committed breach of contract. In theory, homologation binds the debtor and creditors after the settlement plan is approved in PKPU proceedings. However, in practice, a homologation scheme may produce unfair consequences when it requires buyers to continue payment without adequate guarantee that the apartment project will be completed. This raises the question of whether the binding nature of homologation may override the buyer's right to withhold performance, claim compensation, or seek contract termination due to the developer's prior wanprestasi.

Another major problem lies in the limited protection available to consumers in bankruptcy proceedings. Although consumer protection law obliges business actors to compensate consumers for losses caused by defective goods, services, or failure to perform contractual obligations, bankruptcy law places consumers within the creditor hierarchy. As concurrent creditors, apartment buyers may receive only partial recovery, or even no effective recovery, when the bankruptcy estate is insufficient. This condition reveals a normative and practical disharmony between consumer protection law and bankruptcy law [7], [8]. Therefore, this study addresses two main questions: first, how legal protection should be provided to apartment buyers who refuse to continue payment after homologation when the developer has first defaulted; and second, what form of legal responsibility should be imposed on the developer for losses suffered by apartment buyers due to failure to fulfil contractual obligations.

Research's State of the Art

Existing scholarship has discussed various aspects of consumer protection in property transactions, developer bankruptcy, and breach of contract. Arifin emphasized that developer default in housing credit transactions gives rise to consumer protection claims under Law Number 8 of 1999 on Consumer Protection [1]. Prasetyo examined the legal protection of property buyers when a developer becomes bankrupt under Law Number 37 of 2004 on Bankruptcy and PKPU, particularly in relation to the vulnerable position of buyers in bankruptcy proceedings [2]. Saputri, Waspiyah, and Arifin further highlighted that consumers of apartment units face significant legal uncertainty when developers are declared bankrupt because their contractual rights are transformed into creditor claims [4]. Janisriwati also underlined the role of the state in guaranteeing apartment buyers' rights when developers become bankrupt, especially where the object of purchase has not yet been legally transferred [5].

Other studies have focused on reciprocal contract principles and legal remedies in PKPU. Brilianto and Marpaung analysed the doctrine of *exceptio non adimpleti contractus* as a legal defence in breach of contract disputes, showing that reciprocal obligations must be assessed fairly

before determining which party is in default [6]. Mahmudah examined legal remedies against homologation decisions in PKPU cases and explained that homologation may still generate legal disputes when one party fails to implement the approved settlement [9]. Risquanty discussed the legal consequences of developer bankruptcy for apartment buyers, particularly the difficulty of ensuring that consumers obtain either the unit purchased or proportional compensation [10]. Meanwhile, Manurung et al. emphasized that property company bankruptcy produces direct consumer losses and requires stronger protection because consumers often lack bargaining power in insolvency mechanisms [11].

Beyond legal doctrine, recent studies on communication and educational literacy are relevant in understanding why consumers often experience weak bargaining positions. Suchyadi and Martha argued that effective interpersonal communication supports discipline, compliance, and understanding in institutional relationships [14]. Salsabila, Safitri, and Suchyadi also demonstrated that accessible learning materials can improve users' understanding of complex information through structured digital resources [15]. Although these studies are situated in educational contexts, their conceptual contribution is relevant to consumer legal protection because apartment buyers require clear information, transparent communication, and accessible legal literacy to understand contractual risks, developer obligations, and available remedies.

Gap Study

Despite the growing body of literature on consumer protection, developer bankruptcy, and breach of contract, several gaps remain. First, many previous studies examine consumer protection in developer bankruptcy generally, but they do not specifically analyse the legal position of buyers who refuse to continue payment after homologation because the developer had first committed wanprestasi. Second, existing research tends to treat homologation as a binding legal outcome without sufficiently questioning whether the substance of the settlement plan satisfies the principles of good faith, contractual balance, and consumer justice. Third, prior studies have not adequately integrated the doctrine of *exceptio non adimpleti contractus* into the analysis of apartment buyers' refusal to continue payment in the context of PKPU homologation.

Furthermore, the position of consumers as concurrent creditors remains under-theorized in relation to consumer protection norms. Bankruptcy law is designed to regulate collective debt settlement, while consumer protection law aims to protect weaker parties from unfair business practices. When these two regimes intersect, the result may be a normative conflict: the consumer is formally treated as a creditor, but substantively remains a harmed buyer who has not received the promised apartment unit. This gap is crucial because a purely formal application of bankruptcy law may legitimize an unfair redistribution of losses from the defaulting developer to the consumers. Therefore, a more integrative approach is needed to harmonize civil law, consumer protection law, and bankruptcy law.

Objective of the Study

This study aims to analyse the legal protection available to apartment buyers who refuse to continue payment after a

homologation decision when the developer has previously committed breach of contract. Specifically, the study examines whether such refusal can be justified under civil law principles, consumer protection law, and the doctrine of *exceptio non adimpleti contractus*. It also aims to identify the legal responsibility of the developer toward apartment buyers who suffer losses due to construction delay, project abandonment, or failure to deliver the promised unit.

The study contributes to legal scholarship by offering a substantive justice-based analysis of the relationship between homologation, developer default, and consumer rights. It argues that homologation should not be interpreted merely as a formal settlement mechanism, but must also be assessed in light of good faith, proportionality, and the protection of weaker parties. By focusing on the PT Prospek case, this study provides a case-based contribution to the development of a more consumer-oriented approach in Indonesian bankruptcy and property law. The findings are expected to strengthen the argument that apartment buyers should not be forced to continue payment without adequate legal assurance when the developer has first failed to perform its contractual obligations.

II. RESEARCH METHODS

This study employs a normative juridical research method supported by a case-based and conceptual analysis. The normative juridical method is used because the main object of this research is legal norms governing contractual obligations, consumer protection, bankruptcy, and Suspension of Debt Payment Obligation (Penundaan Kewajiban Pembayaran Utang / PKPU) in Indonesia. The study examines primary legal materials, including the Indonesian Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation, and Law Number 20 of 2011 concerning Flats. In addition, secondary legal materials such as scholarly journals, books, court-related discussions, and previous studies on developer default, homologation, and consumer protection are used to strengthen the doctrinal analysis. The normative approach enables the study to evaluate whether the legal position of apartment buyers who refuse to continue payment after homologation can be justified under the principles of reciprocal contract, good faith, consumer justice, and *exceptio non adimpleti contractus* [16].

The research applies three main approaches: the statute approach, the conceptual approach, and the case approach. The statute approach is used to interpret relevant provisions of civil law, consumer protection law, and bankruptcy law, particularly those regulating breach of contract, compensation, creditor hierarchy, and the binding effect of homologation. The conceptual approach is used to analyse legal doctrines such as contractual balance, good faith, consumer vulnerability, and legal responsibility of business actors. Meanwhile, the case approach is applied to examine the PT Prospek apartment dispute as a concrete example of conflict between developer default, PKPU homologation, and consumer protection. The legal materials are analysed qualitatively through descriptive-analytical reasoning by identifying legal issues, classifying relevant norms, interpreting statutory provisions, comparing

them with legal doctrine, and drawing conclusions regarding the appropriate form of protection and responsibility. This method is relevant for examining contemporary legal problems because it allows legal research to connect normative rules with practical legal consequences experienced by affected parties [17].

III. RESULT AND DISCUSSION

Legal Protection for Apartment Buyers Who Refuse to Continue Payment after Homologation

The findings indicate that legal protection for a apartment buyers who refuse to continue payment after a homologation decision must be examined from the initial contractual relationship between the buyer and the developer. In the PT Prospek case, the legal relationship between the parties originated from a reciprocal agreement in which the buyer was obliged to make payment, while the developer was obliged to construct and deliver the apartment unit according to the agreed specifications and time schedule. When the developer failed to complete the construction and deliver the promised unit, the developer's conduct may be legally classified as breach of contract. This breach occurred before the homologation decision; therefore, the buyer's legal rights had already arisen before the settlement plan was approved in the PKPU process.

From the perspective of Indonesian civil law, the buyer's refusal to continue payment cannot automatically be categorized as a new breach of contract. In reciprocal agreements, the performance of one party is closely connected to the performance of the other party. If the developer has not first fulfilled its obligation to construct and deliver the apartment unit, the buyer has a reasonable legal basis to withhold further performance. This reasoning is consistent with the doctrine of *exceptio non adimpleti contractus*, which allows a party to refuse performance when the counterparty has failed to perform its own obligation. Therefore, the buyer's refusal is not merely an economic decision, but a legal response to the developer's prior default. This position is strengthened by the principle of good faith, which requires contractual obligations to be performed fairly and proportionally [18].

The homologation decision in PKPU proceedings has binding legal force. However, its binding nature should not be interpreted as eliminating rights that had previously arisen due to the developer's breach of contract. A settlement plan that requires consumers to continue payment without a clear guarantee of project completion creates a serious imbalance in the distribution of contractual risk. In this context, homologation may produce formal legal certainty, but not necessarily substantive justice. Legal certainty must not be separated from fairness, particularly when one party is structurally weaker and has already suffered financial loss. Therefore, the validity of homologation should be assessed not only by whether the formal voting mechanism was fulfilled, but also by whether the substance of the settlement respects consumer rights and contractual justice [19].

The position of a apartment buyers as concurrent creditors further weakens their protection in bankruptcy and PKPU proceedings. As concurrent creditors, consumers are placed behind secured and preferred creditors in the distribution of

bankruptcy assets. This legal position creates a practical risk that buyers may not receive full repayment even though they have paid substantial amounts for units that were never delivered. Such a condition shows a disharmony between bankruptcy law and consumer protection law. Bankruptcy law focuses on collective debt settlement, while consumer protection law aims to protect weaker parties from unfair business practices. When these two regimes intersect, consumers may lose their character as protected buyers and be treated merely as ordinary creditors.

The results therefore show that apartment buyers who refuse to continue payment after homologation should receive legal protection based on three grounds. First, the developer's prior breach of contract gives rise to the buyer's right to withhold payment, demand performance, terminate the agreement, or claim compensation. Second, consumer protection law obliges business actors to provide compensation for losses caused by failure to fulfil contractual obligations. Third, the principle of substantive justice requires that homologation should not become an instrument that transfers business risk from the developer to the consumer. Accordingly, the legal protection of apartment buyers should be interpreted progressively by harmonizing civil law, consumer protection law, and bankruptcy law.

Legal Responsibility of the Developer toward Injured Apartment Buyers

The developer's legal responsibility arises from the failure to fulfil contractual obligations. In an apartment sale and purchase agreement, the developer is not only responsible for marketing the unit, but also for ensuring legal readiness, construction progress, project completion, and delivery of the apartment unit to the buyer. When the developer markets apartment units without sufficient legal, financial, or construction readiness, the risk of consumer loss becomes substantial. In the PT Propek case, the delayed and unfinished project shows that the developer did not fulfil its core obligation. Consequently, the developer bears civil responsibility for the loss suffered by consumers.

Under civil law, the legal consequences of breach of contract include compensation for costs, losses, and interest. This responsibility is compensatory in nature because it aims to restore the injured party to a position as close as possible to the condition before the breach occurred. In apartment disputes, compensation may take several forms, including refund of payments, payment of delay penalties, delivery of the promised unit, or other proportional remedies. The fact that the developer entered PKPU or bankruptcy does not erase the legal character of the prior breach. Bankruptcy may regulate the mechanism of debt settlement, but it does not remove the developer's responsibility for losses caused by contractual failure [20].

The developer's responsibility should also be viewed from the perspective of consumer protection. As a business actor, the developer has a statutory obligation to provide accurate information, act in good faith, and compensate consumers for losses arising from defective or unfulfilled goods and services. In property transactions, information asymmetry is a major problem because buyers usually do not possess equal access to the developer's financial condition, permit status, construction feasibility, or project risk. Therefore, consumer

protection law must operate as a corrective mechanism to balance the unequal position between developer and buyer. A developer who fails to provide transparency and fails to complete construction cannot shift the entire burden of loss to consumers through a homologation mechanism.

The discussion also shows that homologation cannot be used as a legal shield to avoid responsibility. Although homologation creates a binding settlement framework, the developer remains responsible for implementing the settlement in good faith. If the settlement requires consumers to continue payment while the developer provides no adequate guarantee of project completion, then the arrangement risks violating the principle of contractual balance. In this respect, the court and supervisory institutions should play a more active role in ensuring that settlement plans in PKPU involving property consumers do not merely protect debtor restructuring interests, but also guarantee consumer recovery and legal certainty [21].

The developer's responsibility must therefore include both corrective and preventive dimensions. Correctively, the developer must provide compensation, refund, or proportional settlement to buyers who have suffered losses. Preventively, the developer must ensure legal permits, construction readiness, transparent information, and financial capacity before marketing apartment units to the public. Such preventive responsibility is essential because apartment buyers often make long-term financial commitments based on trust in the developer's representations. Failure to impose strict responsibility on developers may undermine public trust in the property market and weaken the effectiveness of consumer protection law.

Harmonization between Bankruptcy Law and Consumer Protection Law

The findings reveal a normative tension between bankruptcy law and consumer protection law. Bankruptcy law is designed to distribute the debtor's assets fairly among creditors based on their legal ranking. However, in the context of apartment buyers, this mechanism may not provide substantive justice because consumers are not ordinary commercial creditors. They are purchasers of housing units who have paid for a specific object that was promised by the developer. Treating them merely as concurrent creditors ignores the consumer dimension of the transaction and weakens the protective function of law.

Consumer protection law, on the other hand, emphasizes the rights of consumers to security, comfort, accurate information, compensation, and fair treatment. These rights should not disappear simply because the developer enters PKPU or bankruptcy. If consumer claims are reduced to ordinary debt claims, the protective purpose of consumer law becomes ineffective. Therefore, harmonization is needed so that bankruptcy proceedings involving property developers can accommodate the special position of apartment buyers. Such harmonization may include stronger judicial scrutiny of settlement plans, mandatory guarantees for project continuation, prioritization of consumer recovery, and clearer regulation concerning buyers who refuse to continue payment after developer default.

A more progressive interpretation is necessary to ensure that homologation does not become a mechanism that

legitimizes injustice. The court should examine whether the settlement plan provides realistic, measurable, and enforceable protection for apartment buyers. If the plan merely requires consumers to pay additional funds without guaranteeing unit delivery or refund, the plan should be considered inconsistent with the principles of good faith and consumer protection. In this regard, legal certainty must be balanced with fairness. A homologation decision should not only settle the debtor's obligations formally, but also ensure that injured consumers receive meaningful legal protection [22].

Novelty and Contribution of the Study

The novelty of this study lies in its specific focus on apartment buyers who refuse to continue payment after homologation because the developer had already committed breach of contract before the PKPU settlement was approved. Previous studies generally discussed consumer protection in developer bankruptcy or the legal consequences of homologation separately. This study integrates both issues by examining the conflict between the binding effect of homologation and the buyer's right to legal protection based on prior developer default.

The study contributes to legal scholarship in three ways. First, it strengthens the application of *exceptio non adimpleti contractus* in apartment sale and purchase disputes involving PKPU homologation. Second, it proposes that consumer status should not be reduced merely to concurrent creditor status in bankruptcy proceedings. Third, it argues that homologation must be assessed through the lens of substantive justice, not only procedural validity. Therefore, this study provides a doctrinal basis for developing a more consumer-oriented approach in resolving property developer insolvency disputes in Indonesia.

Implications and Suggestions

The practical implication of this study is that apartment buyers should be given clearer legal protection when developers default before homologation. Buyers who have paid for apartment units but have not received the promised units should not be forced to continue payment without sufficient legal guarantee. Regulators should consider strengthening rules on pre-project selling, developer financial disclosure, consumer fund protection, and the legal consequences of developer default in PKPU proceedings.

For courts, this study suggests that homologation plans involving property consumers should be reviewed more carefully. Judges should not only assess whether the voting requirement has been fulfilled, but also whether the settlement plan protects consumers fairly. For developers, this study emphasizes that business difficulty, PKPU, or bankruptcy does not eliminate legal responsibility for prior breach of contract. For consumers, the study highlights the importance of legal awareness, documentation, and collective legal action when facing delayed or failed apartment projects.

IV. CONCLUSIONS

This study concludes that apartment buyers who refuse to continue payment after a homologation decision still have a strong legal basis for protection when the developer has previously committed breach of contract. The contractual

relationship between the buyer and the developer is reciprocal in nature; therefore, the buyer's obligation to continue payment must be balanced with the developer's obligation to construct and deliver the apartment unit as promised. When the developer fails to fulfil this obligation, the buyer's refusal to continue payment should not automatically be treated as a new breach, but rather as a legitimate legal response to the developer's prior default. In this context, the principle of good faith, contractual balance, and substantive justice must guide the interpretation of the homologation decision. The findings also show that homologation in PKPU proceedings should not be understood merely as a formal settlement mechanism that binds all parties without considering the prior legal violations suffered by consumers. Although homologation has binding force, it should not eliminate the rights of apartment buyers that have already arisen due to the developer's breach of contract. A settlement plan that requires consumers to make further payments without providing a clear and enforceable guarantee of project completion may create an unfair allocation of risk. Therefore, legal protection for apartment buyers must be assessed not only through bankruptcy law, but also through civil law and consumer protection principles. Furthermore, this study confirms that the developer's legal responsibility does not disappear because of financial distress, PKPU, or bankruptcy. Bankruptcy proceedings may regulate the mechanism for settling debts, but they do not erase the fact that the developer has failed to perform its contractual obligations. The developer remains responsible for restoring consumer losses through appropriate remedies, including project completion, refund, compensation, or other proportional forms of settlement. Such responsibility is essential to prevent consumers from bearing the full consequences of the developer's business failure. This study also highlights the need to harmonize bankruptcy law and consumer protection law in cases involving failed apartment development projects. Apartment buyers should not be treated merely as ordinary concurrent creditors because their legal position originates from a consumer transaction involving a specific promised object, namely an apartment unit. The law must recognize the substantive vulnerability of consumers who have paid significant amounts but have not received the promised unit. Therefore, a more consumer-oriented legal framework is required to ensure that PKPU and bankruptcy mechanisms do not weaken the protection guaranteed under consumer protection law. In conclusion, the legal protection of apartment buyers in developer default and homologation cases must be directed toward substantive justice, not only procedural certainty. Courts, regulators, and business actors should ensure that settlement mechanisms in property insolvency cases provide fair, transparent, and enforceable protection for consumers. The PT Prospek case demonstrates the urgent need for stronger regulation, stricter supervision of pre-project apartment marketing, and clearer legal remedies for buyers affected by developer default. By strengthening the integration between civil law, consumer protection law, and bankruptcy law, future property disputes can be resolved in a manner that better protects consumers and restores public trust in the housing and apartment market.

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